



National Grain and Feed Association

Arbitration Decision

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October 22, 2009

Arbitration Case Number 2341

Plaintiff: US Commodities LLC, Minneapolis, Minn.

Defendant: Paul Kottschade, Spring Valley, Minn.

Statement of the Case

This dispute involved a claim by US Commodities LLC (USC) against Paul Kottschade (Kottschade) alleging a contractual breach and failure to deliver completely on three contracts for corn. USC cancelled the disputed contracts as a result of the alleged defaults by Kottschade and sought to collect damages representing differences in market prices, which totaled \$155,096.11.

The contracts in dispute were as follows:

1. Contract number 4036/12761, dated Feb. 27, 2007, for delivery in October-November-December 2007 of 25,000 bushels. Kottschade subsequently delivered 14,963.93 bushels and requested that the balance of the contract be rolled on Nov. 20, 2007 to July 2008.
2. Contract number 4261/10430, dated April 9, 2007, for July 2008 delivery of 40,000 bushels.

3. Contract number 4266/10318, dated April 9, 2007, for delivery in October-November-December 2008 of 20,000 bushels.

In addition to the aforementioned contracts, Kottschade entered into another – contract number 4130 – with USC on Feb. 27, 2007 (the same date as contract number 4036/12761) for 10,000 bushels for July 2007 delivery. Kottschade delivered 10,393.21 bushels in July against contract number 4130, and was paid the contract price on the 10,000 bushels plus the *spot* price on the 393.21 excess delivered bushels.

In Kottschade's submission, his main argument was that he called USC in late January or early February 2008 to determine the quantity of corn still needed to be delivered on the remaining 2007 and 2008 contracts. He alleged that he was advised by USC that he did not have any open contracts, and that USC had no knowledge of Kottschade's request to roll 10,000 bushels from contract number 4036/12761 to delivery in July 2008. Based upon the alleged information provided by USC, Kottschade said he then sold his grain elsewhere.

The Decision

The arbitrators closely examined the parties' arguments, documents, and audio recordings submitted in this case, including the texts of the actual contracts in dispute. All the contracts stated that the parties were subject to arbitration under the NGFA Arbitration System. Based upon this evidence, the arbitrators determined that Kottschade had signed each of the disputed contracts and confirmations. In doing so, the arbitrators concluded that Kottschade acknowledged the existence of each contract.

On at least two occasions, USC sent Kottschade statements (in August 2007 and January 2008) showing his open contract positions and their status. As indicated above, Kottschade alleged that he called USC to confirm the status of any open contracts in late January or early February 2008. This phone call presumably would have occurred shortly after Kottschade received the January statement from USC that indicated Kottschade's open contract positions. As neither party submitted any previous amendments to these disputed contracts

indicating a cancellation, the arbitrators determined that it was unlikely that USC would have advised Kottschade that he had no further obligations to deliver on these contracts.

Based upon the information provided, the arbitrators found that Kottschade still was bound by the contracts in dispute, and that USC would be entitled to damages if appropriate evidence was submitted under NGFA Arbitration Rules Section 6(a)(4).

Calculation of Damages

The following is the calculation of damages determined by the arbitrators.

Contract #4036/12761:

March 17, 2007: Original contract date
Confirmation dated March 1, 2007
Contract quantity is 25,000 bu.
Service fee is \$0.07/bu.

Sept. 15, 2007: Futures set vs. CZ07 at \$3.7625
Confirmation dated Sept. 9, 2007

Oct. 16, 2007: 15,000 bu. priced w/basis of -40CZ07, cash price of \$3.3625/bu.
14,963.93 bu. of the contract delivered and final-settled

Nov. 20, 2007: 10,000-bu. balance rolled to CN08 at 28C carry
Futures amended from \$3.7625/bu. to \$4.0425/bu.
Basis to be set by June 30, 2008

June 30, 2008: Kottschade notified via phone that he had been found in default on contract 4036/12761, and that the contract would be canceled.

July 1, 2008: Contract cancelled using a market-on close order. CN08 futures close of \$7.1950/bu.

Award Sought by USC: \$32,396.11

Arbitrators'	10,000 bu. x \$3.1525*	=\$31,525
Award:	36.07 bu. x \$3.1525	= \$113.71
	10,036.07 bu. x \$0.07/bu.	= \$702.52
	<i>(Service fee)</i>	
Award Total:		= \$32,341.23

*Difference between \$4.0425 CN08 contracted futures vs. \$7.1950/bu. cancellation price on July 1, 2008

Contract #4261/10430:

April 9, 2007: Original contract date
Confirmation dated April 10, 2007 – Signed

by seller
Contract quantity is 40,000 bu.
Service fee is \$0.07/bu.
Basis to be established on or before June 30, 2008

June 24, 2008: Futures set per plaintiff's first argument, no confirmation provided showing futures price. (CN08 closed on June 24, 2008 at \$7.125/bu.). This contradicts exhibit number 28 provided by Kottschade dated Aug. 11, 2008, which is a contract summary showing a futures price of \$4.6575/bu. previously shown on exhibit number 27 provided by Kottschade at \$0 (implying no futures established) as of June 12, 2008. Thus, the arbitrators determined there was no conclusive evidence of an established futures price for this contract and that the timeline was contradictory.

June 30, 2008: Kottschade notified by USC via telephone that he had been found in default on contract 4261/10430, and that the contract would be cancelled.

July- 1, 2008: Contract cancelled using a market-on close order. CN08 futures close of \$7.1950/bu. *(This information was not provided by USC).*

Arbitrators' Comments: Page 5 of Kottschade's Answer and Affirmative Defenses addressed under "Other Matters" that: "There is no clear accounting by direct reference to the contracts, the addenda, the invoices, settlement sheets, statements and contract summaries to determine the actual amounts due to the respective parties. There is no methodology provided to set prices per bushel; and there are no references to the CBOT prices for grain. There is no evidence whatsoever that has been submitted to establish the futures prices for the contracts at issue...", which is required by NGFA Arbitration Rules Section 6 (4). USC responded to various other statements included in the Other Matters Section of Kottschade's defenses, but did not address this particular matter – again failing to provide adequate evidence of the claim amount.

Award Sought
by USC: \$105,700 (40,000 bu. x \$2.6425/bu.).

Arbitrators’
Award: No award was granted because of inconclusive and insufficient evidence that the original futures price was established.

Contract#4266/10318:

April 9, 2007: Original contract date
Confirmation dated April 10, 2007 – Signed and returned
Contract quantity is 20,000 bushels O/N/D 08
Service fee is \$0.10/bu.
Basis to be established on or before Dec. 1, 2008

No Date: No date was provided to show when futures prices were set on this contract. Exhibit number 28 provided by Kottschade dated Aug. 11, 2008 did not show a futures price established on this contract. There was no further evidence to show the original futures price versus the cancellation price other than the final invoice showing \$0.85/bu. difference, but with no futures prices.

Aug. 18, 2008: Kottschade notified USC that he would not deliver on contract number 4266/10318.

Aug. 19, 2008: Contract canceled using a market-on close order. CZ08 futures close of \$5.845/bu. (This information was not provided by USC).

Arbitrators’
Comments: Page 5 of Kottschade’s Answer and Affirmative Defenses addressed under “Other Matters” that: “There is no clear accounting by direct reference to the contracts, the addenda, the invoices, settlement sheets, statements and contract summaries to determine the actual amounts due to the respective parties. There is no methodology provided to set prices per bushel; and there are no references to the CBOT prices for grain. There is no evidence whatsoever that has been submitted to establish the futures prices for the contracts at issue...,” which is required by NGFA Arbitration Rules Section 6(4). USC responded to various other statements included in the “Other Matters” section of Kottschade’s defenses but did not address this particular matter – again failing to provide adequate evidence of the claim amount.

Award Sought
by USC: \$17,000 (20,000 bu. x \$0.85/bu.)

Arbitrators’
Award: No award was granted because of inconclusive and insufficient evidence that the original futures price was established.

The Award

Therefore, the arbitrators unanimously awarded US Commodities damages only on contract number 4036/12761 in the amount of **\$32,341.23**, with interest at 5 percent per annum [in accordance with NGFA Arbitration Rule Section 8 (m)] accruing beginning on the date of this decision until payment is made.

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Sean G. Burke, *Chair*
General Counsel
CGB Enterprises Inc.
Mandeville, La.

Kent Prickett
General Manager
Farmers Grain Co.
Pond Creek, Okla.

Carrie Williams
Senior Merchandiser
AgMark LLC
Concordia, Kan.